



Pocket No.: 049051-0189

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

Randy Buswell, et al.

Serial No.: 09/400,733

Filed: September 21, 1999

For: IMPROVED METHOD AND  
APPARATUS FOR DISPLAY OF  
WINDOWING APPLICATION  
PROGRAMS ON A TERMINAL

Customer Number: 31824

Group Art Unit: 2122

Examiner: John Q. Chavis

Mail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.316(c) TO REVIVE  
UNINTENTIONALLY ABANDONED APPLICATION AND  
REQUEST FOR CONTINUED PROSECUTION

Sir:

In the above Application, which became abandoned for failure to timely respond to the October 30, 2000 Office Action, Applicant hereby petitions the Commissioner for Patents under 37 C.F.R. § 1.316 to revive the unintentionally abandoned Application and to permit continued prosecution thereof. Applicant is Wyse Technology, the assignee to the relevant Application and the party who is filing this Petition (a copy of the Assignment document is attached hereto).

It is submitted that this Petition complies with 37 C.F.R. § 1.316(c) in that (1) a reply in the form of a Continuation Application Contingent upon Grant of Petition to Revive and a Transmittal Sheet are enclosed; (2) the undersigned hereby authorizes the Commissioner to

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charge the \$1,330.00 for this Petition required by 37 C.F.R. § 1.17 (m)(2) to Deposit Account No. 502203; (3) the facts below establish that the delay in filing a response to the Office Action was unintentional, and the undersigned states that the delay was unintentional; and (4) this matter was diligently pursued and this Petition is filed accordingly.

#### BACKGROUND

Applicant received an Office Action dated October 20, 2000, in which a due date was set for January 20, 2001. At that time, patent counsel, Timothy Gens, represented Applicant. From the facts available, it appears that Mr. Gens failed to respond to the Office Action. Applicant, however, was under the justifiable belief that the Application was being handled accordingly by Mr. Gens and had no reason to believe otherwise. In fact, Applicant relied entirely on Mr. Gens to manage all patents and patent applications, and at no point during the pertinent time periods did Applicant maintain their own filing or docketing system. To the best of Applicant's then and present knowledge, other applications for which Mr. Gens was responsible were being processed and handled accordingly. As such, there was no reason for Applicant to suspect that Mr. Gens was not adequately responding to all office actions with regard to this Application as well as all other pending applications.

Applicant's discovery of the status of the Application to which this Petition pertains was not initiated until March 25, 2003 when European counsel contacted Applicant regarding an incorrect number for an application to which priority was being claimed on a corresponding PCT Application. Upon investigating the matter, Applicant eventually determined the correct application number, that of the Application referred to herein, and on a June 10, 2003 telephone call to the USPTO, Applicant was informed of the Application's abandoned status. The official

Notice of Abandonment was obtained by Applicant's counsel at that time and forwarded to Applicant on July 7, 2003.

Applicant thereby proceeded in tracing events back to determine the manner by which the Application became abandoned. It appears that upon Mr. Gens' termination from representation in February 2002, the files and information pertaining to the Application were not transferred to subsequent counsel, who continued to represent Applicant until the time the abandonment was discovered. From the time Mr. Gens ceased representing Applicant until discovery of the abandonment, neither Applicant nor subsequent counsel had any reason to know of the Application's imminent abandonment, overall status, or that the Application even existed. As previously mentioned, other matters being handled by Mr. Gens appear to have been properly addressed and appropriately transferred to subsequent counsel.\* Thus, Applicant had no reason to believe that this particular Application was not being handled in a suitable manner as well.

Since discovering that the Application was abandoned, Applicant has been diligently investigating the situation further and since July 2003, Applicant has been diligently seeking new counsel for representation in such matter. Applicant also had attempted to obtain copies of the Application, however was initially unable to do so pending completion of an assignment of the Application to Applicant (attached hereto). The appropriate assignment since has been made, as has a Power of Attorney to the undersigned to address this and related matters.

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\* It should be noted that on May 17, 2003, well after the Notice of Abandonment, the USPTO granted Mr. Gens a Request to Withdraw from Representation with regard to Application 09/401,027, a corresponding application for which Applicant simultaneously is pursuing revival. The 09/401,027 Application also had been abandoned for a failure to respond to an Office Action. A confirmation of this abandonment was provided in an April 28, 2003 Interview between Mr. Gens and Examiner John Q. Chavis wherein Mr. Gens indicated that a Change of Correspondence Address had previously been filed. However, Mr. Gens was unable to provide any documentation in support of this contention, which, incidentally, supports the proposition that the files pertaining to the 09/401,027 Application and the present Application to which this Petition pertains were not transferred to Applicant's subsequent counsel accordingly.

On October 14, 2003, upon review of relevant documentation in the Application's file, the undersigned confirmed that the Application had been abandoned. The relevant documentation in the Application file included a May 17, 2001 Interview Summary which indicated that the Examiner had a telephone conversation with a past colleague of Mr. Gens regarding Mr. Gens's departure from their law firm. The past colleague indicated that Mr. Gens had taken his cases and files with him and had not left any forwarding information. The Notice of Abandonment for the Application was mailed with this Interview Summary. This documentation evidences that Applicant had not received any information regarding the status of the Application throughout the relevant time periods, and, as explained herein, have been diligent in their investigation since becoming aware of the situation through the time of retaining the undersigned.

Furthermore, from the time the undersigned received the information regarding this matter until the filing of this Petition, the undersigned also has been diligent in investigating the reason for the failure to file the response to the Office Action on time, gathering facts and documentation needed to support this Petition, obtaining signatures from the inventors on an assignment document assigning the application to Wyse Technology, communicating with USPTO personnel so as to ensure that the Petition is in good form, and in actual preparation and filing of this Petition. All relevant documentation and correspondence regarding the aforementioned is attached hereto in Appendix A.

In view of the above, Applicant did not have knowledge of the present Application, the status of the Application, nor of the abandonment of the Application. As such, Applicant did not intentionally abandon Application No. 09/400,733, and Applicant requests a grant of this Petition in accord with such facts as provided herein.

PETITION FOR RELIEF

WHEREFORE, the Commissioner for Patents is respectfully requested to grant this Petition to permit Applicant to continue prosecution of the present application as though no abandonment ever occurred.

Applicant's undersigned attorney may be reached in our California Office by telephone at (949) 851-0633. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark J. Itri', is written over a horizontal line.

Mark J. Itri  
Attorney for Applicant  
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**December 22, 2003**

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